

## **IC 13-14-8**

### **Chapter 8. Rules and Standards**

#### **IC 13-14-8-0.3**

##### **Application of rule that does not comply with IC 13-20-7-1**

Sec. 0.3. A rule adopted by the solid waste management board before May 13, 1999, that does not comply with IC 13-20-7-1 (as amended by P.L.224-1999 and before its repeal) applies only to special waste that is disposed of at a solid waste landfill that does not meet Subtitle D design standards of the federal Resource Conservation and Recovery Act as provided in 40 CFR Part 258.

*As added by P.L.220-2011, SEC.279.*

#### **IC 13-14-8-1 Version a**

##### **Adoption or modification of rules and standards**

*Note: This version of section effective until 1-1-2013. See also following version of this section, effective 1-1-2013.*

Sec. 1. The boards may:

- (1) adopt;
- (2) repeal;
- (3) rescind; or
- (4) amend;

rules and standards by proceeding in the manner prescribed in IC 4-22-2 and IC 13-14-9.

*As added by P.L.1-1996, SEC.4.*

#### **IC 13-14-8-1 Version b**

##### **Adoption or modification of rules and standards**

*Note: This version of section effective 1-1-2013. See also preceding version of this section, effective until 1-1-2013.*

Sec. 1. The board may:

- (1) adopt;
- (2) repeal;
- (3) rescind; or
- (4) amend;

rules and standards by proceeding in the manner prescribed in IC 4-22-2 and IC 13-14-9.

*As added by P.L.1-1996, SEC.4. Amended by P.L.133-2012, SEC.85.*

#### **IC 13-14-8-2 Version a**

##### **Proposal for adoption or modification of rules and standards**

*Note: This version of section effective until 1-1-2013. See also following version of this section, effective 1-1-2013.*

Sec. 2. (a) The department may propose to the boards the:

- (1) adoption;
- (2) repeal;
- (3) rescission; or
- (4) amendment;

of any rule or standard.

(b) The rules proposed by the department must be adopted by the

appropriate board under IC 4-22-2 and IC 13-14-9 before the rules become effective.

*As added by P.L.1-1996, SEC.4.*

#### **IC 13-14-8-2 Version b**

##### **Proposal for adoption or modification of rules and standards**

*Note: This version of section effective 1-1-2013. See also preceding version of this section, effective until 1-1-2013.*

Sec. 2. (a) The department may propose to the board the:

- (1) adoption;
- (2) repeal;
- (3) rescission; or
- (4) amendment;

of any rule or standard.

(b) The rules proposed by the department must be adopted by the board under IC 4-22-2 and IC 13-14-9 before the rules become effective.

*As added by P.L.1-1996, SEC.4. Amended by P.L.133-2012, SEC.86.*

#### **IC 13-14-8-3**

##### **Scope**

Sec. 3. A rule or standard adopted by a board may:

- (1) make different provisions as required by varying circumstances and conditions for different contaminant sources and for different geographical areas;
- (2) be made applicable to sources outside Indiana that:
  - (A) are causing;
  - (B) are contributing to; or
  - (C) could cause or contribute to;environmental pollution in Indiana; and
- (3) make provision for abatement standards and procedures:
  - (A) concerning occurrences, emergencies, or pollution; or
  - (B) on other short term conditions constituting an acute danger to health or to the environment.

*As added by P.L.1-1996, SEC.4.*

#### **IC 13-14-8-4**

##### **Considerations in adoption**

Sec. 4. In adopting rules and establishing standards, a board shall take into account the following:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as appropriate.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.

(6) Economic reasonableness of measuring or reducing any particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:

(A) human, plant, animal, or aquatic life; or

(B) the reasonable enjoyment of life and property.

*As added by P.L.1-1996, SEC.4.*

#### **IC 13-14-8-5 Version a**

##### **Proposals for rule**

*Note: This version of section effective until 1-1-2013. See also following version of this section, effective 1-1-2013.*

Sec. 5. (a) Any person may present written proposals for the adoption, amendment, or repeal of a rule by one (1) of the boards. A proposal presented under this section must be:

(1) supported by a statement of reasons; and

(2) accompanied by a petition signed by at least two hundred (200) persons.

(b) If the board with rulemaking authority in the subject area to which the rule pertains finds that the proposal:

(1) is not plainly devoid of merit; and

(2) does not deal with a subject on which a hearing was held within the previous six (6) months of the submission of the proposal;

the board shall give notice and hold a hearing on the proposal.

*As added by P.L.1-1996, SEC.4.*

#### **IC 13-14-8-5 Version b**

##### **Proposals for rule**

*Note: This version of section effective 1-1-2013. See also preceding version of this section, effective until 1-1-2013.*

Sec. 5. (a) Any person may present written proposals for the adoption, amendment, or repeal of a rule by the board. A proposal presented under this section must be:

(1) supported by a statement of reasons; and

(2) accompanied by a petition signed by at least two hundred (200) persons.

(b) If the board finds that the proposal:

(1) is not plainly devoid of merit; and

(2) does not deal with a subject on which a hearing was held within the previous six (6) months of the submission of the proposal;

the board shall give notice and hold a hearing on the proposal.

*As added by P.L.1-1996, SEC.4. Amended by P.L.133-2012, SEC.87.*

#### **IC 13-14-8-6**

##### **Hearings**

Sec. 6. (a) Each hearing on a proposed rule must be open to the public, and a reasonable opportunity to be heard with respect to the subject of a hearing shall be afforded to any person.

(b) All testimony taken at a hearing shall be recorded. The transcript of the hearing and any written submissions to the board at the hearing shall be open to public inspection, and copies of the transcript and written submissions shall be made available to any person upon payment of the cost of reproducing the original.

(c) A person who:

(1) is heard or represented at a hearing; or

(2) requests notice;

shall be given written notice of the action of the board with respect to the subject of the hearing.

*As added by P.L.1-1996, SEC.4.*

### **IC 13-14-8-7 Version a**

#### **Duties of board**

*Note: This version of section effective until 1-1-2013. See also following version of this section, effective 1-1-2013.*

Sec. 7. (a) Without limiting the generality of the regulatory authority of the boards under this title, the appropriate board may adopt rules under IC 4-22-2 and IC 13-14-9 prescribing the following:

(1) Standards or requirements for discharge or emission specifying the maximum permissible short term and long term concentrations of various contaminants of the air, water, or land.

(2) Procedures for the administration of a system of permits for:

(A) the discharge of any contaminants;

(B) the construction, installation, or modification of any:

(i) facility;

(ii) equipment; or

(iii) device;

that may be designed to control or prevent pollution; or

(C) the operation of any:

(i) facility;

(ii) equipment; or

(iii) device;

to control or to prevent pollution.

(3) Standards and conditions for the use of any fuel or vehicle determined to constitute an air pollution hazard.

(4) Standards for the filling or sealing of abandoned:

(A) water wells;

(B) water holes; and

(C) drainage holes;

to protect ground water against contamination.

(5) Alert criteria and abatement standards for pollution episodes or emergencies constituting an acute danger to health or to the environment, including priority lists for terminating activities that contribute to the hazard, whether or not the activities would meet all discharge requirements of the board under normal conditions.

(6) Requirements and procedures for the inspection of any

equipment, facility, vehicle, vessel, or aircraft that may cause or contribute to pollution.

(7) Requirements and standards for equipment and procedures for:

- (A) monitoring contaminant discharges at their sources;
- (B) the collection of samples; and
- (C) the collection, reporting, and retention, in accordance with record retention schedules adopted under IC 5-15-5.1, of data resulting from that monitoring.

(8) Standards or requirements to control:

- (A) the discharge; or
- (B) the pretreatment;

of contaminants introduced or discharged into publicly owned treatment works.

(b) If the solid waste management board or air pollution control board is required to adopt new rules or amend existing rules to implement an amendment to the federal Resource Conservation and Recovery Act or an amendment to or addition of a National Emission Standard for Hazardous Air Pollutants under the federal Clean Air Act, the board shall adopt the new rules or amend the existing rules not more than nine (9) months after the date the federal law becomes effective. This subsection does not limit a board's authority to amend at any time the rules adopted under this subsection.

*As added by P.L.1-1996, SEC.4. Amended by P.L.123-1996, SEC.10.*

## **IC 13-14-8-7 Version b**

### **Duties of board**

*Note: This version of section effective 1-1-2013. See also preceding version of this section, effective until 1-1-2013.*

Sec. 7. (a) Without limiting the generality of the regulatory authority of the board under this title, the board may adopt rules under IC 4-22-2 and IC 13-14-9 prescribing the following:

(1) Standards or requirements for discharge or emission specifying the maximum permissible short term and long term concentrations of various contaminants of the air, water, or land.

(2) Procedures for the administration of a system of permits for:

- (A) the discharge of any contaminants;
- (B) the construction, installation, or modification of any:
  - (i) facility;
  - (ii) equipment; or
  - (iii) device;

that may be designed to control or prevent pollution; or

(C) the operation of any:

- (i) facility;
- (ii) equipment; or
- (iii) device;

to control or to prevent pollution.

(3) Standards and conditions for the use of any fuel or vehicle determined to constitute an air pollution hazard.

(4) Standards for the filling or sealing of abandoned:

- (A) water wells;
- (B) water holes; and
- (C) drainage holes;

to protect ground water against contamination.

(5) Alert criteria and abatement standards for pollution episodes or emergencies constituting an acute danger to health or to the environment, including priority lists for terminating activities that contribute to the hazard, whether or not the activities would meet all discharge requirements of the board under normal conditions.

(6) Requirements and procedures for the inspection of any equipment, facility, vehicle, vessel, or aircraft that may cause or contribute to pollution.

(7) Requirements and standards for equipment and procedures for:

- (A) monitoring contaminant discharges at their sources;
- (B) the collection of samples; and
- (C) the collection, reporting, and retention, in accordance with record retention schedules adopted under IC 5-15-5.1, of data resulting from that monitoring.

(8) Standards or requirements to control:

- (A) the discharge; or
- (B) the pretreatment;

of contaminants introduced or discharged into publicly owned treatment works.

(b) If the board is required to adopt new rules or amend existing rules to implement an amendment to the federal Resource Conservation and Recovery Act or an amendment to or addition of a National Emission Standard for Hazardous Air Pollutants under the federal Clean Air Act, the board shall adopt the new rules or amend the existing rules not more than nine (9) months after the date the federal law becomes effective. This subsection does not limit the board's authority to amend at any time the rules adopted under this subsection.

*As added by P.L. 1-1996, SEC.4. Amended by P.L. 123-1996, SEC.10; P.L. 133-2012, SEC.88.*

#### **IC 13-14-8-8**

##### **Variance from rules**

Sec. 8. (a) Except as provided in section 9 of this chapter, if a person who is affected by a rule adopted by a board believes that the imposition of the rule would impose an undue hardship or burden upon the person, the person may apply to the commissioner for a variance from the rule.

(b) The commissioner may hold a public hearing on an application submitted under subsection (a).

(c) If the commissioner determines that immediate compliance with the rule would impose an undue hardship or burden upon the applicant, the commissioner, except as provided in section 9 of this

chapter, may grant a variance from the rule for any period not exceeding one (1) year.

(d) Upon the request of an applicant, the commissioner may renew an expired variance if the commissioner determines that compliance with the rule would continue to impose an undue hardship or burden upon the applicant. Except as provided in section 9 of this chapter, each renewal may be granted for a period not exceeding one (1) year.  
*As added by P.L.1-1996, SEC.4. Amended by P.L.231-2003, SEC.1.*

#### **IC 13-14-8-9**

##### **Criteria for variance from water quality standards; pollutant minimization plan; duration of variance; renewal**

Sec. 9. (a) A variance from a water quality standard that is at least in part the basis of a National Pollutant Discharge Elimination System (NPDES) permit issued under this title must meet the conditions specified in:

- (1) 40 CFR Part 132, Appendix F, Procedure 2.C; and
- (2) rules adopted by the board.

(b) A variance application must contain a pollutant minimization plan specific to the pollutant for which the variance is requested. With respect to a variance relating to an NPDES permit for a combined sewer overflow discharge, this subsection is satisfied if the NPDES permit holder has prepared a long term control plan and is implementing the nine (9) minimum controls pursuant to:

- (1) 33 U.S.C. 1342(q); and
- (2) 59 FR 18688.

(c) Subject to subsection (d), a variance described in subsection (a) may be granted for a period not to exceed the term of the NPDES permit affected by the variance.

(d) If an NPDES permit remains in effect beyond its stated term under IC 13-15-3-6, a variance described in subsection (a) remains in effect for as long as the NPDES permit requirements affected by the variance are in effect.

(e) A variance described in subsection (a) may be renewed each time the NPDES permit affected by the variance is renewed if the conditions of subsections (a) and (b) continue to be met.

*As added by P.L.1-1996, SEC.4. Amended by P.L.231-2003, SEC.2; P.L.54-2005, SEC.1.*

#### **IC 13-14-8-10**

##### **Undue hardship; criteria**

Sec. 10. A board may adopt rules under IC 4-22-2 to specify the following with respect to any of the board's rules:

- (1) Criteria to define what constitutes an undue hardship or burden, as used in section 8 of this chapter, for the purposes of that rule.
- (2) Procedures for making determinations on applications for variances from that rule.

*As added by P.L.1-1996, SEC.4.*

#### **IC 13-14-8-11**

##### **Appeals**

Sec. 11. (a) A person affected by a decision of the commissioner under sections 8 and 9 of this chapter may, within fifteen (15) days after receipt of notice of the decision, appeal the decision to the office of environmental adjudication. All proceedings under this section to appeal the commissioner's decision are governed by IC 4-21.5.

(b) The commissioner's decision to grant a variance does not take effect until available administrative remedies are exhausted.

*As added by P.L.1-1996, SEC.4. Amended by P.L.25-1997, SEC.4.*

#### **IC 13-14-8-11.5**

##### **Site-specific limitation for NPDES permit; application process and criteria**

Sec. 11.5. (a) The department shall prepare and publish in the Indiana Register guidance on the application process and criteria for obtaining a site-specific limitation for a National Pollutant Discharge Elimination System (NPDES) permit. Criteria to be considered must include wet weather events, water effects ratio, and other site-specific considerations as determined by the department. Water effects ratio shall be the ratio of the aquatic toxicity of a parameter in the water of the receiving stream compared to the aquatic toxicity of the parameter in the laboratory water used to determine the standard.

(b) Beginning January 1, 1997, the department shall review any application and make a preliminary determination for a site-specific limitation not later than one hundred eighty (180) days after receipt of the application. The department may request additional information necessary to make the preliminary determination consistent with the guidance published under subsection (a). The one hundred eighty (180) day period does not include any days between the date the department requests additional information and the date the additional information is received by the department.

(c) The final determination on a site-specific limitation will be part of the NPDES permit decision under 327 IAC 5.

(d) If the agency does not issue a preliminary determination within the one hundred eighty (180) days provided for in subsection (b), the applicant may require that the department hire a qualified outside consultant to prepare the preliminary determination as expeditiously as possible.

(e) The department and the applicant may agree to extend the one hundred eighty (180) day period provided for in subsection (b).

*As added by P.L.123-1996, SEC.3.*

#### **IC 13-14-8-11.6**

##### **Permits for modification or construction of water pollution facility**

Sec. 11.6. (a) A discharger is not required to obtain a state permit for the modification or construction of a water pollution treatment or control facility if the discharger has an effective:



(1) National Pollutant Discharge Elimination System (NPDES) industrial permit for direct discharges to surface water; or

(2) industrial waste pretreatment permit not issued by the department for discharges to a publicly owned treatment works.

(b) If a modification is for the treatment or control of any new influent pollutant or increased levels of any existing pollutant, within thirty (30) days after commencement of operation, the discharger shall file with the department a notice of installation for the additional pollutant control equipment and a design summary of any modifications.

(c) The water pollution control board shall adopt a general permit rule for the approval of sanitary collection system plans, lift station plans, and force main plans.

*As added by P.L. 72-1999, SEC. 2.*